

personal representative of his deceased debtor, so as to enable the heir to protect himself without any circuitry of judicial proceeding; and to save the realty, by having the personal estate first applied to the satisfaction of the debts; and to do justice to all the creditors by allowing them to come in according to their respective priorities; or for their due proportions. The adoption of these principles, and the giving of this construction to this statute, necessarily threw the administration of all real assets into the Court of Chancery; and gave a new and very enlarged scope to a creditor's suit.

Such must have been the course of proceeding, in all cases, under this statute, after the death of a debtor, as well where his heir was of full age, as in those cases where he was a minor; *Cor v. Callahan, ante, 51, note*; for, if it were not so, then a simple contract creditor, as he was not allowed to sue at law, could, before the year 1818, have had no recourse against the real assets in the hands of adult heirs in any way whatever; since prior to that time, the only Act of Assembly in relation to the matter, being merely intended to prevent delay in proceeding against infants, 1785, ch. 72, s. 5, this British Statute which had made such real estate assets for the payment of debts; would have been, thus far, virtually nullified. (r) This matter has, however, been put to rest by a pos-

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(r) *TYSON v. HOLLINGSWORTH*.—This bill was filed, on the 25th of May, 1801, by Nathan Tyson and others, creditors of Thomas Parkin and Francis McKenna, partners trading under the firm of Parkin & McKenna, against Jesse Hollingsworth and Rachel his wife, Susannah Goodwin and James Carey. The bill states that the firm of Parkin & McKenna had contracted debts to a considerable amount with the plaintiffs, as appeared by the promissory notes of the firm therewith exhibited; that Thomas Parkin, by his last will, devised all his estate, real and personal, to the defendant Rachel, his mother, and appointed her his executrix, and soon after died; that she was, at that time, above twenty-one years of age: and on her refusing to act as executrix, letters testamentary, with the will annexed, were granted to the defendant Susannah; that, afterwards, Francis McKenna made his last will, by which he appointed the defendant James Carey, his executor, and soon after died; upon which the defendant Carey, qualified as his executor. The bill further states, that Thomas Parkin and Francis McKenna, at the time of their death, were considerably indebted, as appeared by the accounts of the defendant James Carey, passed before the Orphans' Court, and exhibited as a part of the bill; and that all their partnership effects and personal estate were insufficient to discharge their debts; and that the whole of their partnership effects, and their personal estate, had been exhausted in the payment of his debts; and that there remained then, due from the estate of Parkin and McKenna, to the plaintiffs, a considerable sum of money; that the testator, Francis, left no real estate; that the testator Thomas, held, at the time of his death, ten shares of bank stock, which had passed into the hands of his administratrix, the defendant Susannah; that he had died unmarried, and without issue, seized of real estate; but left no brother or sister of the whole or half blood; nor any issue of a brother or sister; nor did he leave a father; and that his mother, who was his heir-at-law, claimed the real estate left by